REMARKS

At the time of the *Office Action*, Claims 1-36 were pending of which the Examiner rejected Claims 1-36. Applicant has amended Claims 1, 2, 3, 10, 19 and 28-33. Applicant has carefully reviewed the Application in light of the *Office Action* and respectfully requests reconsideration and favorable action in this case.

Section 101 Rejections

The Examiner rejected Claims 19-27 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicant respectfully traverses these rejections for the reasons stated below.

Claim 29 is directed to "software stored on a tangible computer-readable media." The Examiner rejects these limitations stating, "according to applicant's specification . . . the medium is disclosed as a 'transmission medium' which does not fall into one of the four statutory classes." See *Office Action*, page 3. Applicant respectfully contends that the "tangible computer-readable media" of Claim 19 is statutory subject matter. See M.P.E.P. § 2106 ("When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized."). Accordingly, Applicant respectfully requests the Examiner to withdraw the rejections of Claims 19-27 under 35 U.S.C. § 101.

Section 102 Rejections

Claims 1-6, 10-15, 19-24, and 28-33 are rejected by the Examiner under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,240,530 to Togawa ("*Togawa*"). Claims 1, 10, 19, and 28 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,073,198 to Flowers et al. ("*Flowers*"). Applicant respectfully traverses these rejections for the reasons stated below.

Claim 1 is directed to a method for detecting and removing malicious code from a computer system. According to the method, an operating system of the computer system is determined and a memory scanning pattern is determined for scanning a memory of the computer system for malicious code. The memory scanning pattern is specific to the determined operating system. Furthermore, the computer system is scanned for malicious

code according to the memory scanning pattern. Neither *Togawa* nor *Flowers* disclose, or even teach or suggest, each of these limitations. For example, neither *Togawa* nor *Flowers* disclose, teach, or suggest, "determining a memory scanning pattern specific to the determined operating system for scanning a memory of the computer system for malicious code" as required by Claim 1. For at least these reasons, Applicant respectfully contends that Claim 1 is patentably distinguishable from *Togawa* and *Flowers*.

Similarly, Claims 10, 19, and 28 each include limitations generally directed to determining a memory scanning pattern specific to the determined operating system. For at least these reasons, Applicant respectfully contends that Claims 1, 10, 19, and 28, and each of their dependent claims (2-9, 11-18, 20-27, and 29-36) are each patentably distinguishable from *Togawa* and *Flowers*.

Section 103 Rejections

Claims 7-9, 16-18, 25-27, and 34-36 are rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over *Togawa* in view of information of which the Examiner has taken Official Notice. Applicant respectfully traverses these rejections for the reasons stated below.

"It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." MPEP § 2144.03 (citing *Zurko*, 258 F.3d 1379, 1385, 59 U.S.P.Q.2d 1693, 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings")).

"Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While 'official notice' may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be 'capable of

such instant and unquestionable demonstration as to defy dispute'" MPEP § 2144.03 (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961)).

"It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03. Applicant traverses the Official Notice taken by the Examiner.

Specifically, with respect to claims 7, 16, 25 and 34 the Examiner states, "[t]he Examiner hereby takes official notice that scanning memory of a computer system according to the memory layout is notoriously well known." *Office Action*, page 7. Without conceding to any characterization of Applicant's claims, Applicant respectfully disagrees because subject matter that the Examiner considers to be presently well known does not disclose, teach, or suggest whether such subject matter was well known at the time of the invention, especially in the context of software and other computer-related inventions. Applicant further requests that the Examiner produce a reference in support of his position pursuant to MPEP § 2144.03.

With respect to claims 8, 17, 26 and 35 the Examiner states, "[t]he Examiner hereby takes official notice that dividing memory locations of the computer system into a plurality of memory blocks and scanning predetermined memory blocks is notoriously well known." *Office Action*, page 8. Without conceding to any characterization of Applicant's claims, Applicant respectfully disagrees because subject matter that the Examiner considers to be presently well known does not disclose, teach, or suggest whether such subject matter was well known at the time of the invention, especially in the context of software and other computer-related inventions. Applicant further requests that the Examiner produce a reference in support of his position pursuant to MPEP § 2144.03.

With respect to claims 9, 18, 27 and 36 the Examiner states, "[t]he Examiner hereby takes official notice that selected memory blocks are not scanned is notoriously well known." *Office Action*, page 8. Without conceding to any characterization of Applicant's claims, Applicant respectfully disagrees because subject matter that the Examiner considers to be presently well known does not disclose, teach, or suggest whether such subject matter was well known at the time of the invention, especially in the context of software and other computer-related inventions. Applicant further requests that the Examiner produce a

reference in support of his position pursuant to MPEP § 2144.03 so that Applicant may respond accordingly.

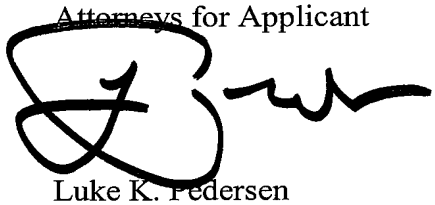
CONCLUSION

Applicant respectfully submits that this Application is in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims. If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

No additional fee is believed to be due. However, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to **Deposit Account No. 02-0384 of Baker Botts L.L.P.**

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



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